

LC Paper No. CB(1)36/99-00
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by the Administration)

Ref : CB1/PL/ITB/1

Legislative Council
Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 12 July 1999, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon SIN Chung-kai (Chairman)
Hon MA Fung-kwok (Deputy Chairman)
Hon David CHU Yu-lin
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon James TO Kun-sun
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, SBS, JP
Hon LAW Chi-kwong, JP
- Members absent** : Hon Kenneth TING Woo-shou, JP
Prof Hon NG Ching-fai
- Public officers attending** : For Items I, III & V
Ms Eva CHENG, JP
Deputy Secretary for Information Technology &
Broadcasting (1)

For Item I

Miss Annie TAM, JP
Deputy Secretary for Information Technology &
Broadcasting (3)

For Item III

Mr Anthony S K WONG, JP
Director-General of Telecommunications

For Item IV

Mr Stephen MAK, JP
Principal Assistant Secretary for Information
Technology & Broadcasting (D)

Mr Dennis PANG
Assistant Director of Information Technology
Services

Ms Ada LEUNG
Acting Assistant Director of Intellectual Property

Mr POON Kai-tik
Acting Director, Corporate Services, Housing
Department

Mr CHEUNG Woon-hang
Chief Systems Manager, Housing Department

For Item V

Mr Eddie MAK
Principal Assistant Secretary for Information
Technology & Broadcasting (A)

Mr K S WONG
Assistant Director of Telecommunications

Clerk in attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Sarah YUEN
Senior Assistant Secretary (1)4

I Confirmation of minutes of meeting and matters arising
(LC Paper No. CB(1)1680/98-99 and 1677/98-99(02))

The minutes of the Panel meeting held on 12 April 1999 were confirmed.

2. Members noted the Panel's list of follow-up actions.

Progress of the Cyberport project
(LC Paper No. CB(1)1677/98-99(01))

3. The Deputy Secretary for Information Technology and Broadcasting (3) (DS/ITB(3)) briefed members on the chart prepared by the Administration showing a total of 30 milestones of the Cyberport project (the Project) under four broad types of activities, namely, infrastructure works, superstructure construction, management, and marketing and promotion. At the Chairman's request, she agreed to report on progress made towards these milestones on a quarterly basis and whenever there were important developments. Members agreed the first of such reports should be made at a special meeting to be held on 13 September 1999.

Admin

4. In reply to Miss Emily LAU on objections to the Project received in accordance with various statutory procedures, DS/ITB(3) reported that the amendments to the Pokfulam Outline Zoning Plan, the proposed roadworks, and the proposed sewage submarine outfall and temporary jetties had been gazetted on 30 April 1999 under the Town Planning Ordinance (TPO), the Roads (Works, Use and Compensation) Ordinance (R(W,U&C)O), and the Foreshore and Seabed (Reclamations) Ordinance (F&S(R)O) respectively. Upon expiry of the objection period on 30 June 1999, 14 objections under the TPO, six objections under the R(W,U&C)O and one objection under the F&S(R)O had been received. These objections were being handled and decisions would be made in, and before, the first quarter of 2000. At Miss LAU's request, DS/ITB(3) agreed to include under "Infrastructure Works" details on the objections and, if possible, the Administration's proposed course(s) of action to deal with them.

Admin

(Post-meeting note: The required details had been included in the chart updated for the September special meeting under a new heading "Gazetted of Project".)

II Information papers issued since last meeting (LC Paper No. CB(1)1600/98-99)

5. Members noted inter alia the letter from the Hong Kong Internet Service Providers Association expressing views on the development of broadband and Internet services in Hong Kong. As the Office of the Telecommunications Authority (OFTA) would issue a consultation paper on this subject in August 1999, members agreed that the issue be discussed at the September meeting. At Miss CHOY So-yuk's request, the Deputy Secretary for Information Technology and Broadcasting (1) (DS/ITB(1)) agreed to address in the consultation paper the impact of the development of broadband services on the four fixed telecommunications network services (FTNS) licensees. She also took note of Mr Howard YOUNG's concern that whilst broadband services should be catered for, it was also important to preserve sufficient frequency capacity for aviation control. The Administration undertook to briefly address this point at the forthcoming meeting on the understanding that if necessary, Mr YOUNG's concern should be further pursued at the Economic Services Panel.

Admin

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, this item was subsequently replaced by "progress report on the moratorium on the issue of further local FTNS licences".)

III Moratorium on the issue of further FTNS licences (the moratorium) (The relevant LegCo Brief (File Ref.: ITBB CR 7/4/6 (99) XV) issued vide LC Paper No. CB(1)1263/98-99)

Progress of negotiations with the three new FTNS licensees on future network roll-out in return for the extension of the moratorium

6. DS/ITB(1) reported that the three existing new FTNS licensees' commitments on further network rollout were still under discussion and an announcement would be made on the outcome in due course. The Director-General of Telecommunications (DG Tel) further advised that the proposed commitments would be considered in terms of the extent of network roll-out to reach end-customers, the extent of Type II interconnection, and the amount of capital investment in network infrastructure. To guarantee performance, the three new FTNS licensees would each provide a satisfactory level of corporate guarantee for their respective commitments. Members noted the overall effect of such commitments would be that by the end of 2002, over 50% of the consumers would have the choice of an alternate service provided by one of the three new FTNS licensees. Their service coverage would also be extended to cover most of the northern, eastern and southern parts of Hong Kong Island, most of Kowloon and part of the New Territories. As a result, Hong Kong's

telecommunications infrastructure would be strengthened to generate more effective competition in the local fixed telecommunications market to benefit consumers.

7. In response to the Chairman's comment that the progress of negotiation was too slow, DS/ITB(1) explained that the three existing new FTNS operators had already submitted their proposed commitments but further discussion was carried out with each of them to seek improvements to their commitments. Moreover, as such commitments were legally binding and involved corporate guarantees, greater care and more time were required in finalising the details and the relevant legal documentation.

8. Addressing Mr Howard YOUNG's and Miss CHOY So-yuk's concern about problems in relation to Type II interconnection with Cable and Wireless HKT (HKT)'s network, DG Tel pointed out that as a result of mediation by OFTA, the four local FTNS licensees had already agreed on a code of practice on practical arrangements for Type II interconnection in April 1999. Moreover, the three existing new FTNS licensees' commitments on further network roll-out would cover the extent of Type II interconnection and improvements in this regard could be forthcoming.

Licensing issues

9. Where the progress of licensing was concerned, DG Tel reported that OFTA was drawing up the criteria and guidelines on the licensing of local fixed telecommunications services using wireless-based technologies and external telecommunications facilities services. Members noted the criteria and guidelines would be ready within a week for inviting applications with a view to issuing the licences by the end of 1999. They also noted that for both services, there would not be a cap on the number of licences.

10. Miss CHOY So-yuk enquired about the progress of the Administration's negotiation with Hong Kong Cable Television Limited (HKCTV) on its licence to provide telecommunications services using cable modem technology over its cable network, subject to its commitments on further roll-out of its optic fibre network and the return of its Microwave Multipoint Distribution System (MMDS) frequencies according to an agreed schedule. In reply, DS/ITB(1) advised that details of HKCTV's commitments on further network rollout were still under discussion in the context of the mid-term review of its TV licence. An agreement was expected to be reached within the next few months and details would be reported to the Panel upon endorsement by the Broadcasting Authority. In response to Miss CHOY's comment that HKCTV had already met its rollout commitment under its TV licence, DG Tel explained that cable modem technology could only be applied on hybrid fibre coaxial cable network. As such, should HKCTV wish to introduce telecommunications service using the technology, further network rollout was

necessary.

Technical issues

11. In response to Mr Howard YOUNG on the feasibility of providing both telephone and Internet services over one single telephone line, DG Tel confirmed that the high-speed Integrated Service Digital Network (ISDN) of certain operators could provide such dual service and that with Type II interconnection, the three existing new FTNS operators could also offer ISDN service. In addition, the use of broadband network for Internet services could also make available a variety of services via one telephone line only.

Policy issues

12. Where Government's policy on satellite facilities was concerned, Dr Raymond HO was keen to ensure that the Administration would open the satellite facilities market in a forward-looking manner with due regard to users' needs to ensure adequate satellite capacity for Hong Kong. In response, DG Tel pointed out that in recognition of the importance of the opening of the satellite facilities market to opening up Hong Kong's external telecommunications market for non-wireline facilities, OFTA was already making active preparation for granting an unlimited number of external facilities licences on 1 January 2000 to applicants either launching their own satellites or leasing capacity from satellite operators for various information technology, broadcasting or telecommunications services. In this regard, a site had already been reserved at Chung Hum Kok for the development of a teleport to facilitate investment in satellite stations for external telecommunications and uplinking of broadcasting signals.

13. Dr Raymond HO did not concur with the Government's view that there was no need to launch a satellite to cover Hong Kong exclusively. In response, DG Tel stressed that there were already many satellites licensed in Hong Kong. Moreover, in response to the allocation by the International Telecommunication Union to Hong Kong four Ku-band channels for high power broadcasting satellite service, satellites would be launched around the end of 2000 or early 2001 to facilitate the provision of direct-to-home service.

IV Installation and use of software in Government- the problem about the use of unlicensed software

(LC Paper Nos. CB(1)1677/98-99(03), (04) and (05))

The case of the Housing Department

14. Members noted this item had been included in the agenda as a result of

newspaper reports alleging pirated software being used in the offices of the Housing Department (HD). Noting that the discovery was made during an internal audit conducted in March 1999 on HD's own initiative, the Chairman and the Deputy Chairman expressed appreciation for HD's software management efforts.

15. In response to Mr Fred LI's query about the high percentage of unauthorised software found in HD (13% of the microcomputers inspected), the Acting Director, Corporate Services, Housing Department (DCS/HD(Atg)) and the Chief Systems Manager, HD (CSM/HD) explained that only a portion of the unauthorised software so identified was pirated software as by definition, unauthorised software also included licensed software not on the Department's approved list, shareware downloaded from the Internet beyond the free trial period and software downloaded from outside documents for the purpose of reading them. For example, the particularly high percentage of unauthorised software in the Finance Unit of the Commercial & Services Branch, HD (the Finance Unit) was due to its large quantity of downloaded shareware.

16. Mr Fred LI and Miss Emily LAU opined that the extent of the use of pirated software in HD should be ascertained having regard that the possession of illegal software was an infringement of copyright liable to both criminal and civil proceedings. In response, representatives of HD pointed out that of the four unauthorised software programmes identified in the Tak Tin Estate Office, only one was illegal. As for the unauthorised software in the Finance Unit, about 50% was illegal. At members' request for more specific figures, CSM/HD said that such figures might not be available as the unauthorised software identified had already been removed. Nevertheless, he undertook to try to provide more information after the meeting.

Admin

17. Mr Fred LI and Miss Emily LAU enquired about the disciplinary actions, if any, taken against the staff who brought in the unauthorised software for use. In reply, DCS/HD(Atg) said that since the source of the authorised software could not be confirmed, there was difficulty in tracing the culprits. As for those staff in Tak Tin Estate Office and the Finance Unit who admitted using illegal software, DCS/HD(Atg) reported that no disciplinary action could be taken because according to the staff's written explanation, the software in question had been installed long before they worked in the Office/Unit. He however assured members that HD took a very serious view on the use of unauthorised software and had issued warning letters to offending staff. He reiterated that staff who had committed such misconduct would be sanctioned in accordance with the Civil Service Regulations. CSM/HD undertook to submit to the Panel the results of the investigation and information on the action taken by the Department on offending staff.

Admin

18. In this connection, Miss Emily LAU referred to page 21 of the Handbook for the Civil Service on Managing Intellectual Property in the

Government, which elaborated on the implications of the use of pirated software, and enquired whether the case in question had tarnished the Government's reputation. In response, the Principal Assistant Secretary for Information Technology and Broadcasting (D) (PAS/ITB(D)) pointed out that the passage concerned mainly served to highlight the Government's determination in ensuring the proper use of copyright products within the Government.

Preventive measures

19. Miss CHOY So-yuk considered that the Administration should draw lessons from the HD case and eliminate all factors that might induce the unauthorised use of software. In response, PAS/ITB(D) assured members that preventive measures were available to put in place an effective monitoring system in both HD and other Government departments. Moreover, since an efficient Government purchasing system was in place, there was no need to circumvent the usual procedures and procure unauthorised software for use.

20. Where preventive measures in HD were concerned, representatives of HD informed members that HD would maintain a comprehensive inventory of the software programmes in use and their resident locations to facilitate subsequent checking so that unauthorised software installed could be easily tracked down. Furthermore, each estate/office would designate a staff member to conduct quarterly checks and report incidents to his/her Branch Liaison Officer who would then make a consolidated report to the Branch Head.

21. As to whether other Government departments would effect a similar monitoring mechanism, PAS/ITB(D) explained that this would be a matter for them to decide as software management was the responsibility of the management of individual bureaux and departments. However, where necessary, the Information Technology Services Department (ITSD) and the Intellectual Property Department (IPD) would provide technical support. At the Chairman's request, PAS/ITB(D) agreed to provide before June 2000 a comprehensive report on the internal software audits by individual bureaux/departments and the follow-up actions. On Miss LAU's suggestion to conduct surprise external audits by the ITSD or IPD, he confirmed that such inspection was carried out in the Audit Commission's annual audit exercise.

22. To prevent the unauthorised use of downloaded software, PAS/ITB(D) and the Assistant Director of Information Technology Services (AD/ITS) said that ITSD had already issued guidelines requiring staff concerned to obtain permission from the copyright owners and their department heads for the use of such software. Where necessary, ITSD would provide technical and advisory support. In this regard, the Deputy Chairman suggested that to avoid inadvertent use of unauthorised software, the Government might consider

specifying the software to be used by outside parties in preparing documents such as tenders. In response, PAS/ITB(D) confirmed that this practice was already in place and posed no problem to the parties concerned as the software used by the Government was usually readily available in the market.

23. Addressing Miss Emily LAU's concern about the adequacy or otherwise of existing guidelines on the proper use of software within the Government, PAS/ITB(D) stressed that the guidelines were clear and regularly revised to cater for new needs arising from technological advances. In this connection, members opined that the LegCo Commission might also consider drawing members' and their staff's attention to the proper use of computer software.

V Any other business - Telecommunication (Amendment) Regulation 1999

(The relevant LegCo Brief (File Ref.: ITBB/B 209/3 (98)) issued by general despatch on 7 July 1999)

24. Members noted that under subsection 34(3) of the Interpretation and General Clauses Ordinance (IGCO) (Cap.1), if the scrutiny period of a piece of subsidiary legislation should expire "after the last sitting before the end of a session or dissolution of the Legislative Council; but on or before the day of the second sitting (Council meeting) of the Legislative Council in the next session, the period shall be deemed to extend to and expire on the day after that second sitting (Council meeting)". As such, the 28-day scrutiny period of the Amendment Regulation in question, which would be tabled at the Council meeting on 14 July 1999 for negative vetting, would expire on the day after the second Council Meeting of the 1999-2000 legislative session, i.e., in mid October 1999. However, as the Secretary for Information Technology and Broadcasting was empowered to appoint a commencement date for the Amendment Regulation, the Administration now proposed that the Secretary appoint 1 September 1999 to be the day on which the Amendment Regulation would come into operation in order to enable the legislation to take effect earlier.

Proposed commencement date of the subsidiary legislation

25. On the appropriateness of the subsidiary legislation taking effect before the expiry of the scrutiny period, DS/ITB(1) stressed that the said arrangement was in order under existing legislative procedure and members could still move amendments to the Amendment Regulation before the expiry of its scrutiny period notwithstanding the fact that it had already commenced operation on 1 September 1999. In reply to the Chairman, the Assistant Legal Advisor 3 (ALA3) confirmed that the arrangement was procedurally in order as pursuant to section 28(4) of the IGCO, "a person who makes subsidiary legislation may provide for the subsidiary legislation to commence on a day to be fixed by

notice to be given by him or by some other person designated in the subsidiary legislation". She further advised that the Commencement Notice for the Amendment Regulation itself was also a piece of subsidiary legislation subject to scrutiny by members.

26. Addressing members' concern about the implications of subsequent amendments to the Amendment Regulation after it had commenced operation, DS/ITB(1) confirmed that in case amendments were passed by the Council, the Administration would issue new licences incorporating the amendments to operators. As to concern about adverse consequences that might arise, e.g., that a licensee might choose to give up the licence because of certain subsequent amendments, DS/ITB(1) emphasised that since the amendments, if any, should be mainly technical and that there was wide support for the policy decisions underlying the Amendment Regulation, the possibility of such adverse consequence was minimal.

27. In this regard, DS/ITB(1) highlighted the need for early implementation of the Amendment Regulation in order to give effect to policy decisions arising from the 1998 Review of Television Policy and the 1998 Review of Fixed Telecommunications to allow Satellite Master Antenna Television (SMATV) licensees to distribute subscription television services in an opened-up television market and to allocate certain channels in the in-building distribution systems for telecommunications services. The Amendment Regulation's early implementation would thus provide certainty for operators who intended to introduce new subscription television and multimedia services through SMATV systems and, in turn help expedite the relevant licensing process and facilitate opening up of the TV market.

28. On the range of new services to be brought about by the Amendment Regulation, the Principal Assistant Secretary for Information Technology and Broadcasting (A) (PAS/ITB(A)) supplemented that as a result of the Amendment Regulation, SMATV licensees would be allowed to receive and distribute licensed subscription television services in addition to those of Satellite TV and the HKCTV, including subscription television services under a Satellite Television Uplink and Downlink Licence and video-on-demand programme services licensed under the Television Ordinance, and to receive and distribute telecommunications messages received from satellites intended for reception by users of the SMATV systems, and by interconnection, to receive and relay telecommunications messages between users of the SMATV systems and other telecommunications systems or services licensed under the Telecommunication Ordinance. As a result, by allowing SMATV systems to distribute both subscription television services and telecommunications messages, the Amendment Regulation could help maximise the use of the frequency spectrum in the in-building distribution system.

29. The Deputy Chairman cast doubt on whether the proposed arrangement

would provide certainty to operators, pointing out that by gazetting the Amendment Regulation, interested operators could already be informed of the legislative amendments introduced to implement the relevant policy decisions. He also considered that the Administration's proposed arrangement, which aimed at enabling the Amendment Regulation to commence operation before the expiry of its scrutiny period, was inappropriate as the move might give rise to the impression that the Administration was trying to pre-empt members' decision. In response, DS/ITB(1) stressed that the Administration had no intention to pre-empt members' decision and the Administration's primary concern was to bring the subsidiary legislation into operation as early as possible in view of the service improvement it could effect.

30. Mr LAW Chi-kwong considered the proposed arrangement undesirable having regard that although the scrutiny period of the Amendment Regulation would not expire until mid October 1999, the public might be discouraged from putting forward proposals to improve it after it had taken effect on 1 September 1999.

31. Miss Emily LAU also expressed dissatisfaction at the proposed arrangement. Referring to the Lingnan University Bill and the recent Resolution made under the Immigration Ordinance on which members were urged to decide expeditiously, she was gravely concerned about similar incidents and considered that should there be a need for early implementation, the Administration should introduce the Amendment Regulation earlier instead of requesting members to rush through it.

32. In response, DS/ITB(1) reiterated that the proposed arrangement was not unprecedented and had been adopted for a number of bills which involved mainly technical amendments. She also explained that the Administration had in fact tried its best to introduce the Amendment Regulation earlier. However, owing to the need to incorporate changes arising from the 1998 Review of Fixed Telecommunications, which had not been finalised until May 1999, the proposed arrangement was the most practicable option to accelerate the legislative process. The Administration nevertheless took note of the views expressed by members.

(Post-meeting note: The proposed Commencement Notice to appoint 1 September 1999 to be the day on which the Amendment Regulation will come into operation has not been gazetted)

Frequency allocation

33. In reply to the Chairman on the planned allocation of the frequency spectrum of the in-building wiring upon enactment of the Amendment Regulation, the Assistant Director of Telecommunications (AD Tel) explained that a consultation paper on the frequency layout plan of in-building coaxial

cable distribution system had been released in March 1999. OFTA was still examining the consultation results and would announce the relevant decisions within one or two weeks. In gist, the following measures had been proposed to promote more efficient use of the frequency spectrum -

- (a) By encouraging cable, satellite and terrestrial broadcasters to apply digital compression or other spectrally efficient technology in their transmission, especially in the introduction of new services.
- (b) By increasing the bandwidth of the frequency spectrum (for example, to extend the upper operating frequency of the system to 862 MHz or 1 GHz) to maximise the number of available channels.
- (c) By publishing the frequency allocation plan of in-building coaxial cable systems to provide a handy reference for spectrum management and telecommunications systems design.

Admin

34. At the Chairman's request, AD Tel agreed to provide the Panel with an information paper on the consultation results as well as an updated frequency allocation plan in due course.

(Post-meeting note: The required information has been issued vide LC Paper No. CB(1)53/99-00.)

35. The meeting ended at 4:45p.m.

Legislative Council Secretariat
4 October 1999